

**Arizona State Board of Homeopathic Medical  
Examiners  
Minutes of Regular Meeting  
Held at 1400 West Washington, B-1  
Phoenix, Arizona**

**November 14, 2006**

**I. CALL TO ORDER AND ROLL CALL**

Presiding officer, Dr. Charles Schwengel, called the meeting to order at 9:00 a.m.

**ROLL CALL**

**Present:**

Charles Schwengel, DO, MD(H)  
Don Farris  
Martha Grout, MD, MD(H)  
Todd Rowe, MD, MD(H)  
Marie Stika

**Absent:**

Garry Gordon, DO, MD(H)

Nancy Beck, Assistant Attorney General, Christine Springer, Executive Director, staff from the Office of the Auditor General, and members of the public were also present.

**II. REVIEW/APPROVAL OF MINUTES**

*Regular Minutes*

Dr. Grout made a motion to approve the September 12, 2006 regular meeting minutes. Marie Stika seconded the motion that passed unanimously.

*Executive Session Minutes*

September 12, 2006 Revised Executive Minutes

Dr. Rowe made a motion to approve the revised executive session minutes. Mr. Farris seconded the motion that passed unanimously.

*September 21, 2006 Teleconference Minutes*

Dr. Rowe moved to approve the teleconference minutes. Dr. Grout seconded the motion that passed unanimously.

**III. REVIEW, CONSIDERATION, AND ACTION ON PENDING APPLICATIONS**

*Physicians*

Stephanie Warner, M.D.

Dr. Schwengel announced that Dr. Warner had requested that her application be deferred to the January 9, 2007 regular meeting.

***Homeopathic Medical Assistant New Applications***

Dr. Rowe recused himself from discussions related to the medical assistant applications of Firlande Volcy, Elliott Schmerler and Leann Christian. He stated that he was the responsible supervisor for Firlande Volcy and Leann Christian and that Dr. Schmerler had purchased educational materials relative classical homeopathic training from his school in 2003.

Dr. Grout made a motion to approve Firlande Volcy's application. Mrs. Stika seconded the motion that passed with a majority vote. 4-0, Rowe recused, Gordon absent.

Mr. Farris suggested that medical assistants should be present at the board meetings to respond to questions members may have concerning their application. Assistant Attorney General Beck noted the board's approval of the application is a registration only and that the board's authority is over the supervisory physician. There is no requirement that medical assistants appear for an interview as part of their registration process. Mr. Farris requested that a policy discussion requiring medical assistant attendance as part of the registration process be included on the next regular meeting agenda.

Members of the Board requested that Dr. Rowe explain the portion of Ms. Volcy and Ms. Christian's medical assistant registration applications relating to "proposed job description". He stated that in the third year of studies, students of the college must register as homeopathic medical assistants to participate in the clinical component of their homeopathic training. Students attend clinic one day per month and no more than one student per day is supervised by him.

Dr. Grout move to approve Leann Christian's application. Ms. Stika seconded the motion that passed with a majority vote. 4-0, Rowe recused, Gordon absent.

*Note: The status report on pending applications and discussion of Elliott Schmerler's application was moved to a later time and was discussed following the lunch break.*

***Status Report – Incomplete Physician and HMA Applications***

Mrs. Springer gave a brief status report concerning the progress of pending physician and medical assistant applications. She stated that the applications filed by Dr. Gregory Meyer and Jan Burdick were nearly complete and would appear on the next regular board meeting agenda.

***Homeopathic Medical Assistant New Application(s)***

Elliott Schmerler

Dr. Schmerler was present to discuss his medical assistant application. His supervising physician, Dr. Rick Shacket, was also present.

There was a brief discussion regarding whether Dr. Rowe would recuse himself from the discussion of this agenda item in as much as he had recused in prior

discussions concerning pending matters involving Dr. Schmerler. However, following discussion with AAG Beck, he withdrew his recusal since he had not directly participated in training the applicant had obtained to meet application requirements for the instant matter.

At the request of Board members, Dr. Schmerler summarized the history of a federal felony conviction for one count of tax fraud and the status of his physician license in the State of Nevada. He stated that he had settled all of his IRS requirements and repaid all taxes. With regard to his active probation, Dr. Schmerler stated it would end in February, 2007.

In response to a question from Dr. Rowe, Dr. Shacket explained that Dr. Schmerler's duties as a homeopathic medical assistant would include interviewing patients and providing surgical assistance in the clinic. When asked by Dr. Schwengel about his current activities, Dr. Schmerler explained he had completed surgical assistant training, written a protocol for a free clinic, and served as a speaker for the American Cancer Association.

AAG Beck directed the board's attention to the definition of minor surgery found in ARS §32-2901(17) and noted the statute indicates that a licensee shall perform the surgery. A homeopathic medical assistant is a registered entity and would not be considered a licensee.

Dr. Shacket clarified that Dr. Schmerler would not exceed the scope of his registration as a medical assistant by performing surgery, but would only assist in limited procedures allowed under ARS 32-2901(17). Dr. Shacket also explained that he is a Board certified proctologist and would provide on-site supervision of any surgeries performed.

Dr. Schwengel directed dialogue with Dr. Schmerler regarding how the clinic intended to ensure that patients would not be confused by his contemplated status as a homeopathic medical assistant in as much as he was a trained and previously licensed physician and surgeon.

Dr. Rowe moved to adjourn to Executive Session at 1:50 p.m. for legal advice pursuant to A.R.S. 38-431.03(A)(3). Dr. Grout seconded the motion that passed unanimously. The Board returned to the regular session at 2:10 p.m.

During discussion, Dr. Schwengel expressed concern that the job description as submitted with Dr. Schmerler's application was too broad. Furthermore, it is not clear in the statute that a homeopathic medical assistant can assist in a surgical capacity. Dr. Rowe stated he was not comfortable with granting the application. Mr. Farris reminded the board members that Dr. Schmerler's conviction for tax fraud did not involve his medical competence.

At this point the members questioned Dr. Schmerler about the date of his release from probation and whether or not he had applied to reinstate his Nevada

medical license. Dr. Schmerler replied that he had applied for early release of his probationary status and that he expected it would be granted.

Dr. Rowe moved to deny the application pursuant to *A.A.C. R4-38-310 A and C* and suggested Dr. Schmerler reapply when he is released from probation. His explained that the denial was based on concern with Dr. Schmerler's felony conviction and revocation of his previous medical license in the State of Nevada. Dr. Grout seconded the motion.

Further discussion was held regarding the form of the affidavit submitted with the application and whether or not it was properly completed. AAG Beck directed the board's attention to public reprimands issued to Dr. Schmerler in Nevada for not performing safe care related to a cosmetic surgical procedure.

Dr. Rowe reiterated his motion to deny the application. The motion was seconded by Dr. Grout and passed unanimously.  
Roll call to deny: 5-0

#### **IV. PERFORMANCE AUDIT REVIEW/UPDATE**

Following a motion by Dr. Grout and a second by Mr. Farris the Board adjourned to Executive Session at 9:25 a.m. to review confidential information relative to the ongoing performance audit pursuant to A.R.S. §38-431.03(A)(2). The Board returned to the regular meeting at 10:10 a.m.

*The Board adjourned for a short break at this point in the meeting and returned to the regular session at 10:25 a.m.*

#### **V. REVIEW, CONSIDERATION, AND ACTION REGARDING INVESTIGATION/COMPLAINTS.**

*Investigative Interviews pursuant to ARS 32-2934 ( C ).*

##### **06-06 Kathleen Fry, MD, MD(H) and**

##### **Consideration of request from Dr. Fry for board member recusal**

Dr. Fry was present for the investigative interview. The complainant, M.O. was also present by telephone.

Assistant Attorney General (AAG) Beck reviewed with the Board, Dr. Fry's September 12, 2006 correspondence in which she requested the recusal of certain board members. AAG Beck noted that if there is an appearance of impropriety a board member has the discretion to recuse. She stated that intemperate statements are not a reason for recusal and if a member can fairly adjudicate a case they can still participate in the matter. The presence of other board members during a meeting in which intemperate remarks are made does not demand recusal from all those present during the deliberations.

AAG Beck inquired about the status of Dr. Fry's Osteopathic Board complaint against Dr. Schwengel. Mrs. Springer stated the case had been closed by the Board of Osteopathic Medical Examiners and no action taken. AAG Beck indicated that Dr. Schwengel could participate in current matters since there was no ongoing investigation against him in matters filed by Dr. Fry.

AAG Beck discussed the "doctrine of impossibility" noting that if a majority of board members have a conflict of interest the board would not be able to conduct business and there was no evidence to indicate that in this matter any board members had a conflict of interest regarding Dr. Fry's pending matter. At this point Ms. Beck requested that the members of the Board indicate by roll call if they had a conflict of interest in the instant case.

Stika , Farris, Schwengel, Grout – no conflict

Rowe – recuse (lead investigator)

Gordon – absent

Following the board members' declaration concerning recusal Dr. Schwengel invited Dr. Rowe, the lead investigator in the case, to present his findings regarding "usual and customary fees". Dr. Rowe stated that he had utilized the results of a recent national survey conducted by the National Center for Homeopathy in which 1165 participants from around the country had contributed information covering the average length of time spent by physicians in initial and follow-up visits and the costs associated with those visits. The average cost of an allopathic office visit in Arizona was \$74.40 compared to an average cost of the Arizona homeopathic physician at \$91.25. The cost of the 26 minute telephone consultation with M.O. was \$222.00 which represented, when compared to the results of the national survey, a 312% increase over the national average.

At the request of President Schwengel, Mrs. Springer reviewed the chronology of the complaint and the process of determining jurisdiction with the Arizona Medical Board. She stated that although Dr. Fry holds both an allopathic and homeopathic medical license, the Arizona Medical Board had declined jurisdiction on March 21, 2006 and referred the case to the Homeopathic Board noting in their referral letter that they declined to review a matter involving an alternative therapy.

M.O. was invited to make a statement and commented that the complaint was made because she was not informed of the cost of the telephone consultation in advance. She was upset about the high cost and felt that a physician should inform a patient of the cost of a telephone consultation before it occurs. Dr. Schwengel inquired whether or not she had a clearly written contract with Dr. Fry. M.O. responded that she although she signed informed consents she did not specifically remember signing a statement of fees.

AAG Beck clarified that when a board considers what a reasonable and customary fee is; they must consider the complexity of the service and the skill needed to provide that service.

At this point Dr. Fry was invited to address the Board and commented about a concern she had with statements made by Dr. Gordon in a July, 2005 Teleconference meeting during a complaint review and her continuing belief that the Board can not fairly review complaints made against her without bias.

President Schwengel made a motion to adjourn to Executive Session for legal advice at 10:55 a.m. Mrs. Stika seconded the motion that passed unanimously. The Board returned to the regular meeting at 1:05 a.m.

The Board granted five minutes to Dr. Fry for comments related to her perceptions that the Board may carry bias in addressing complaints made against her. She stated that she disagreed with the Arizona Medical Board's decision to defer jurisdiction in this matter to the homeopathic board, noting that the treatment provided to M.O. addressed issues related to endocrinology, rather than nutrition.

At this point, Dr. Fry provided an overview of her training and again, stated that to characterize the Schwartzbein Therapy as a nutritional modality was incorrect and more appropriately should be characterized as a therapy to assist patients with endocrinological and hormonal symptoms.

Dr. Schwengel urged the doctor to describe the nature of the treatment and the fees charged. Dr. Fry explained that the Schwartzbein Therapy involves nutrition, exercise, supplements, and provides a whole body approach. She referred the Board to her written response submitted on April 30, 2006 and explained that M.O. had been given a statement of fees as part of the patient intake procedure and had signed an informed consent on April 16, 2004.

Board members questioned Dr. Fry about her fees and whether or not they were posted in her public waiting room. Dr. Fry explained that M.O. had been informed in advance that a fee would be charged to cover the cost of providing the phone consultation to M.O. Mrs. Stika questioned why M.O. had not been charged for other phone consultations. Dr. Fry replied that an appointment had been scheduled with M.O. on a specific date and specified time to address her concerns. The Board also inquired about written policies and procedures that staff follow when informing patients about fees. Mr. Farris inquired about the reason the cost of providing a phone consultation is more costly than the initial consult done in office.

President Schwengel questioned M.O. concerning whether or not she understood that a fee would be charged for the phone consultation. M.O. replied that she was not informed and had she known that a fee would be charged she

would have gone to Dr. Fry's office for an appointment. When the call was terminated and M.O. was directed to the receptionist, it was her understanding that she was going to order enzymes. When quoted the cost of the 26 minute consultation she was caught off guard and provided her charge card number for what amounted to \$500 per hour or \$8.00 per minute.

Discussion among the board members and AAG Beck ensued. Dr. Schwengel asked the board to consider if there had been a violation of statute regarding unprofessional conduct, A.R.S. §32-2933(33) concerning charging a clearly unreasonable fee. Dr. Grout stated she was impressed that Dr. Fry had also provided free consultations to M.O. but that patients should be clearly informed in advance if there will be a charge for a phone consultation. In this instance M.O. was clearly unhappy with the fee and indicated she was not informed prior to the initiation of the phone consult.

Mrs. Stika urged Dr. Fry to clarify at the beginning of a phone consultation that there will be a fee charged.

In response to a quest from Dr. Grout, AAG Beck discussed disciplinary options available to the Board, including an informal interview, a consent agreement, dismissal or a letter of concern.

Dr. Grout made a motion to issue a letter of concern based on information provided during the investigative interview that the patient had not be adequately informed in advance, that a fee would be charged for the phone consultation. She urged Dr. Fry to consider providing a written fee schedule to each new patient and documenting in a signed consent that the information was given to the patient. Mrs. Stika seconded the motion that passed with a majority vote.

Roll Call: 4 – 0

Schwengel, Stika, Grout, Farris – Aye

Rowe – Recused

Gordon – Absent

*The Board adjourned for lunch at this point in the meeting and reconvened at 1:15 p.m.*

***Investigative Interviews (pursuant to ARS §32-2934 ( C )***

**06-17 Hayle Aldren, MD(H)**

Mr. Farris indicated his recusal in this matter since he had performed an on-site investigation related to the condition of the clinic premises.

Dr. Aldren was present for his investigative interview.

Mr. Farris was invited to present his report concerning an allegation made by the complainant R.S., about unsanitary premises. He explained the results of his on-

site inspection and stated that no evidence of unsanitary conditions had been found. Photographs were presented and viewed by the board members.

Dr. Rowe reviewed the allegations made by the complainant and clarified that the board's September 12, 2006 discussion of this matter had found no violations relating to fees or promises of a cure for an incurable condition.

Dr. Aldren addressed the board and provided a copy of a revised informed consent for their consideration.

Dr. Rowe made a motion to close the investigation and dismiss the complaint indicating the allegations were not supported by a review of the record. Mrs. Stika seconded the motion that passed with a majority vote.

Roll call: 4-0

Rowe, Stika, Grout, Schwengel – Aye

Farris – recuse (investigator)

Gordon - absent

### ***Ongoing Reviews***

#### **06-02 Jeffrey Beeley, M.D.**

The Board considered the written response from Dr. Beeley concerning his advertising and determined that he was not in violation of ARS §32-2931(A) or (B) relating to the practice of medicine as a homeopathic physician. Mr. Farris expressed concern about his original advertising that had included a reference to homeopathic practice. Mrs. Stika noted Dr. Beeley had corrected his advertisement and removed the wording.

AAG Beck informed the board that their authority to stop the illegal practice of homeopathic medicine was limited to injunctive relief pursuant to ARS §32-2940. Since Dr. Beeley had voluntarily complied with their request to revise his advertising the matter was moot.

Mrs. Springer was directed to inform Dr. Beeley that the investigation was closed and to forward an application encouraging that he applies for a homeopathic physician license.

#### **07-01 Thomas Grade, M.D.**

A brief discussion was held regarding Dr. Grade's responses on his 2006 renewal application and his response to the board's information request. Dr. Grout noted the Arizona Medical Board's summary restriction of Dr. Grade's dispensing privileges and inquired about their imposition of a ten year time frame.

Dr. Rowe made a motion to invite Dr. Grade for an informal interview to be held at the next regular meeting pursuant to ARS §32-2934(G). Dr. Grout seconded the motion that passed unanimously.

Roll call: 5-0



***Status Reports***

**05-21 Charles Crosby MD(H)**

**05-20 Thomas Grade MD, MD(H)**

**06-09 Murray Susser, MD(H)**

**06-15 Thomas Lodi, MD(H)**

Mrs. Springer presented a brief update to the board regarding the listed pending matters as follows:

Preparation of a consent agreement and order is ongoing regarding Dr. Crosby;

The tabled matter concerning Dr. Grade is pending formal hearing at the Arizona Medical Board. She reminded the members that the board had reviewed the complaint and tabled the matter when it was determined that care and treatment of the patient was primarily allopathic. Jurisdiction had been ceded to the Arizona Medical Board;

Mrs. Springer informed the board that Dr. Susser had retained an attorney and was requesting that the investigative interview scheduled this date be continued to the January 9, 2007 regular meeting. The continuance had been granted as requested;

The investigative report in the matter regarding Dr. Lodi is being prepared as requested by the Board. The Board is pending receipt of one additional patient record.

**VI. REVIEW, CONSIDERATION, and ACTION ON RULES, LEGISLATION, SUBSTANTIVE POLICY STATEMENTS**

1. Mrs. Springer stated she would prepare a Notice of Proposed Rulemaking for *A.A.C. Article 3. Education, Supervision, ...for Registration of Medical Assistants* for publication at the Office of the Secretary of State that would incorporate all of the changes discussed in the last two meetings. Scheduled work hours and the necessity to reduce office hours had prevented completion of this task.

2. A Notice of Rulemaking Docket Opening for *A.A.C., Article 1, General, Section R4-38-105 Fees* had been published by the Secretary of State's office on October 20, 2006. This rulemaking proposes to make permanent the emergency fees filed by the board as a result of budget considerations and revenue shortfall. Dr. Grout made a motion approving the proposed permanent fees. Dr. Rowe seconded the motion that passed unanimously.

3. Mrs. Springer stated that the Attorney General's Office was reviewing the request for emergency fees related to *A.A.C., Article 1, General, Section R4-38-105 Fees*. The deadline for either approving or disapproving the Board's request is November 28, 2006. The Board urged Mrs. Springer to send out renewal notices based on the current fee and stated that once the emergency fees were approved a second notice could be sent requesting the additional monies.

4. No legislative proposals were discussed for the 2007 legislative session.

## **VII. REVIEW, CONSIDERATION, and ACTION ON PROFESSIONAL BUSINESS**

1. The board urged Mrs. Springer to contact the attorney general's office to request research regarding whether or not the board's revised Pain Management Guidelines should be incorporated into a substantive policy statement.

2. The board requested that estimates be obtained from Arizona Government University and other providers that may be on state contract to determine costs related to validation of questions prepared for the revised written examination.

3. Dr. Rowe and Dr. Grout volunteered to serve on a legislative subcommittee to proposed statutory language related to continuing education for homeopathic physicians. There was general discussion of staffing needs to track continuing education and practices at other state boards that perform random audits of a percentage of licensees.

4. Mrs. Springer updated the board regarding the proposed amendments to AAC, Title 9, Chapter 10, Article 11. She stated them that she had contacted the Department of Health Services and informed them of the board's interest in the matter. The rule currently allows D.O.'s and M.D.'s to write orders for residents under the care of a home health agency. The board is requesting the inclusion of their physicians as eligible to continue care of their patients that are placed under the care of a home health agency.

## **VIII. REVIEW, CONSIDERATION and ACTION ON OTHER BUSINESS**

### **1. Executive Director Report**

#### **a) Financial Report**

Mrs. Springer presented information relating to the financial condition of the board. She stated the board's computer had failed and that a consultant had been contacted to recover database files utilizing Lotus Approach 2000 software. Although file recovery had been accomplished, a new Access database had been installed on the remaining computer which utilized a Windows XP operating system. The Lotus Approach 2000 software was not supported by the Windows XP operating system which necessitated the migration of the database to an Access platform. The board's costs were \$900. The Board has sufficient revenue to operate through the second week of December, at which time emergency fees should be in place and renewal revenues should begin to be received.

## **IX. FUTURE AGENDA ITEMS**

Discussion of questions relating to sanctions by other regulatory agencies as it relates to the board's renewal application

Procedures to grant continuances of scheduled hearings and investigative interviews

**X. CALL TO THE PUBLIC**

No public members were present at this time

**XI. FUTURE MEETING DATES**

November 24, 2006 Legislative Committee Teleconference scheduled for 8:00 a.m.

**XII. CLOSE OF BUSINESS/ADJOURNMENT**

The meeting adjourned at 4:30 p.m. following a motion by Mrs. Stika. Dr. Rowe seconded the motion that passed unanimously. The next Regular Meeting of the Board will convene at the State Board's Offices, 1400 W. Washington, Basement Conference Room B-1, Phoenix, Arizona, 9:00 AM, on **January 9, 2007**.

Respectfully,

Christine Springer  
Executive Director